

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to child and medical support and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 98, “Support Enforcement Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 252D and 252E and 45 CFR §303.31.

Purpose and Summary

These proposed amendments conform Division I of Chapter 98 and rule 441—98.39(252D,252E) with recent changes to 45 CFR §303.31 (Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule, effective January 19, 2017) and Iowa Code chapter 252E. The Final Rule and statutory changes require consideration of public and private health care coverage when determining medical support. The majority of these amendments are intended to update language in the rules to match the recently changed language in Iowa Code chapter 252E.

These proposed amendments also amend the chapter’s Division II regarding the criteria and procedures for amending the amount to be withheld from the obligor’s income to pay a child support delinquency when such amount is based on the hardship criterion. The amendments will expand the time frame when an obligor may request an amendment of the amount to be withheld from the obligor’s income due to hardship, allow the Child Support Recovery Unit (CSRU) to periodically review the amount withheld as payment toward a delinquency when such amount was granted on the grounds of hardship, increase the minimum amended amount to be withheld from \$5 to \$15, and clarify that the hardship criterion may only be applied to cases where only a delinquency is due.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 18, 2018. Comments should be directed to:

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Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 441—98.1(252E) as follows:

441—98.1(252E) Definitions.

“Medical support” means either the provision of a health benefit plan, including a group or employment related or an individual health benefit plan, or a health benefit plan provided pursuant to Iowa Code chapter 514E to meet the medical needs of a dependent and the cost of any premium required by a health benefit plan, care coverage or the payment to the obligee of a monetary amount in lieu of a health benefit plan, either of which is an obligation separate from any monetary amount of child support ordered to be paid of cash medical support. Medical support is not alimony.

“Obligee” means a ~~eustodial~~ parent or other natural person legally entitled to receive a support payment on behalf of a child.

“Obligor” means a ~~noneustodial~~ parent or other natural person legally responsible for the support of a dependent.

“Reasonable in cost” means that a health insurance is employment-related or other group health insurance regardless of the service-delivery mechanism.

ITEM 2. Amend rule 441—98.2(252E) as follows:

441—98.2(252E) Provision of services. The child support recovery unit shall provide medical support enforcement services to public assistance and nonpublic assistance recipients of Medicaid for whom an assignment of support is in effect and shall provide these services to nonpublic assistance recipients upon their request child support services.

~~98.2(1) Nonpublic assistance recipients.~~

~~a. Applicants for nonpublic assistance services shall be informed of the availability of medical support enforcement services at the time of application and shall be asked about their desire to receive these services on Form CS-3103-0, Application for Non-Assistance Support Enforcement Service. Applicants who do not desire medical support enforcement services at the time of application may~~

~~request these services in writing at a later date by completing Form 470-2744, Nonpublic Assistance Medical Support Request.~~

~~b. The child support recovery unit shall inform recipients of nonpublic assistance services whose application forms did not contain notice of medical support enforcement services of the availability of these services in writing on Form 470-2744 prior to establishing or enforcing medical support, and shall not provide these services unless a written request is received.~~

~~**98.2(2) Public assistance recipients.** Unless good cause has been established, recipients of Medicaid public assistance are required to cooperate with the child support recovery unit as a condition of eligibility as prescribed in rule 441—75.14(249A). This includes completing and signing Form 470-2748, Public Assistance Medical Support Request, upon request of the child support recovery unit.~~

ITEM 3. Rescind and reserve rule ~~441—~~**98.3(252E)**.

ITEM 4. Rescind and reserve rule ~~441—~~**98.4(252E)**.

ITEM 5. Amend subrule 98.5(1) as follows:

98.5(1) Information from an employer. The unit shall gather information concerning a health benefit plan an employer may offer an obligor as follows:

a. The unit ~~shall~~ may send Form ~~470-0177~~ 470-0177M, Employment and Health Insurance Questionnaire, ~~or Form 470-2240, Employer Health Insurance Questionnaire~~, whenever a potential employer is identified.

b. The unit shall secure ~~medical support~~ information about health care coverage from a known employer on Form 470-2743, Employer Medical Support Information, when Form 470-3818, National Medical Support Notice, or an order has been forwarded to the employer pursuant to Iowa Code section 252E.4.

ITEM 6. Amend subrule 98.5(3) as follows:

98.5(3) Disposition of information. The unit shall provide the information:

a. To the Medicaid agency and to the obligee, when requested, when the dependent is a recipient of Medicaid.

b. To the obligee, when requested, when the dependent is not a recipient of Medicaid.

ITEM 7. Amend subrule 98.7(2) as follows:

98.7(2) Health ~~benefit plan or insurance~~ care coverage.

a. If an obligor was ordered to provide a health ~~benefit plan or insurance~~ care coverage under an order, but did not comply with the order, the child support recovery unit may implement the order by forwarding to the employer a copy of the order, an ex parte order as provided in Iowa Code section 252E.4, or Form 470-3818, National Medical Support Notice.

b. No change.

ITEM 8. Amend subrule 98.7(3) as follows:

98.7(3) Termination of employment. When the child support recovery unit receives information indicating the obligor's employment has terminated, the unit shall secure the status of the health benefit plan by sending Form 470-3218, Employer Insurance Notification, to the employer.

If no response is received within 30 days of sending Form 470-3218, the unit shall send a second request on Form 470-3219, Employer Insurance Second Notification, to the employer. ~~If the obligor does not notify the unit, or no response is received from the employer within 90 days of sending Form 470-3218, the unit shall notify the obligee that the health benefit plan may have terminated.~~

ITEM 9. Amend subrule 98.8(2) as follows:

98.8(2) Informal conference.

a. The obligor shall be entitled to only one informal conference for each new employer to which the unit has forwarded Form 470-3818, National Medical Support Notice, or order under Iowa Code section 252E.4 to enforce medical support.

b. No change.

c. The issues to be reviewed at the conference shall be as follows:

- (1) No change.
- (2) Whether the obligor is already providing health ~~benefit plan~~ care coverage for the dependent.
- (3) Whether the availability of dependent health care coverage ~~under a health benefit plan~~ is in error.
- (4) Whether the obligor was ordered to provide a health ~~benefit plan~~ care coverage under the support order.

d. The results in an informal conference shall in no way affect the right of the obligor to file a motion to quash the order under Iowa Code section ~~252E.4~~ 252E.6A.

ITEM 10. Amend rule 441—98.24(252D) as follows:

441—98.24(252D) Amount of withholding. The child support recovery unit shall determine the amount to be withheld by the employer or other income providers as follows:

98.24(1) *Current support obligation exists.* When a current support obligation exists, the amount withheld shall be an amount equal to the current support obligation, and an additional amount equal to ~~50~~ 20 percent of the current support obligation to be applied toward the liquidation of any delinquency. However, the amount withheld to be applied toward the liquidation of any delinquency shall be 50 percent of the current support obligation for any support order entered or modified prior to July 1, 1998, and for which an income withholding order has been filed by the Iowa child support recovery unit prior to July 1, 1998.

~~Effective July 1, 1998, the amount withheld to be applied toward the liquidation of any delinquency shall be 20 percent of the current support obligation for any support order entered or modified on or after July 1, 1998, or for any support order entered or modified prior to July 1, 1998, for which no income withholding order has been filed by an Iowa CSRU prior to July 1, 1998.~~

~~*a.* The obligor may request a modification of the amount withheld as payment toward the arrearage or reimbursement on the grounds of hardship. The procedure for this request is described in rule 98.43(252D). Hardship exists if the obligor's income is 200 percent or less than poverty level for one person as defined by the United States Office of Management and Budget and revised annually in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981.~~

~~*b.* If hardship is claimed by the obligor, the child support recovery unit may verify income from:~~

- ~~(1) The employer or other income provider of the obligor.~~
- ~~(2) The obligor.~~
- ~~(3) The state employment security agency.~~
- ~~(4) Other records available in accordance with Iowa Code section 252B.9.~~

~~*c.* If the hardship criteria are met, the amount withheld as payment toward the arrears may be modified as follows:~~

~~(1) The obligor's gross yearly income shall be divided by 200 percent of the established yearly gross poverty level income for one person. That amount shall be multiplied by .5. The resulting figure will be the percent of the current support order which shall be withheld for payment on the arrearage.~~

~~(2) The amount withheld on the arrearage shall not be less than \$5 per month.~~

~~(3) If criteria for withholding 20 percent toward liquidation of any delinquency are also met, the lesser of 20 percent or hardship is to be withheld.~~

98.24(2) *Current obligation ended.* When the current support obligation has ended or has been suspended, the income withholding order shall remain in effect until any delinquency has been satisfied. The amount withheld shall be equal to the amount of the most recent prior current support obligation which is greater than zero. ~~Hardship criteria shall be applied in accordance with subrule 98.24(1). However, in the following circumstances, the amount withheld shall be 20 percent of the amount owed for current support at the time the obligation ended or was suspended; and, if hardship criteria are met, this amount shall be one-half of the amount established under the guidelines in subrule 98.24(1):~~

~~*a. to d.* No change.~~

98.24(3) *No support ordered.* When there is no current child support ordered and the obligation is solely the result of a judgment which does not specify a repayment schedule, the ~~unit shall establish the amount to be withheld per month as follows:~~

~~a. Initially the withholding amount shall be set at the amount for one person from the ADC FIP schedule of basic needs. Hardship may be asserted as set out in subrule 98.24(1).~~

~~b. If hardship criteria are met in these circumstances, the amount withheld on reimbursement shall be determined by dividing the obligor's gross yearly income by 200 percent of the poverty level income for one person. The resulting number is the percent of the existing withholding amount that will now be withheld. This amount will be reduced by one-half if the obligor has legal custody of the child.~~

98.24(4) No change.

~~**98.24(5) Disability continues.** If hardship criteria under paragraph 98.43(2) "e" are met and the amount withheld as payment toward the arrears is modified, the obligor is deemed to continue to meet the hardship criteria for the duration of the social security disability benefits or supplemental security income disability benefits. If those benefits have not ended, but the amount to withhold would otherwise be amended under this rule and under rule 441—98.45(252D), the unit shall determine the amount to withhold for payment toward arrears under this rule by using the same percent as was used when the hardship amount was first determined under paragraph 98.43(2) "e," but the amount shall not be less than \$5 per month.~~

ITEM 11. Adopt the following new rule 441—98.25(252D):

441—98.25(252D) Amendment of amount of withholding due to hardship.

98.25(1) Request for amendment. If subrule 98.24(2) or 98.24(3) applies, the obligor may request at any time an amendment of the amount withheld as payment toward the delinquency or reimbursement on the grounds of hardship. The obligor must submit the request in writing to the child support recovery unit.

98.25(2) Hardship criterion. Hardship exists if the obligor's income is equal to or less than 200 percent of the poverty level for one person according to the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

a. If hardship is claimed by the obligor, the child support recovery unit may verify income from:

- (1) The employer or other income provider of the obligor.
- (2) The obligor.
- (3) The state employment security agency.
- (4) Other records available in accordance with Iowa Code section 252B.9.

b. If the hardship criterion is met, the amount withheld as payment toward the delinquency may be amended as follows:

(1) The obligor's gross yearly income shall be divided by 200 percent of the established yearly gross poverty level income for one person. That amount shall be multiplied by .5. The resulting figure shall be multiplied by the most recent prior current support obligation or the amount determined pursuant to subrule 98.24(3), as applicable, to determine the amended amount. Notwithstanding this calculation, the amended amount shall not be less than \$15 per month.

(2) If criteria for withholding 20 percent toward liquidation of any delinquency are also met, the lesser of 20 percent or the amended amount determined in subparagraph 98.25(2) "b"(1) is to be withheld.

98.25(3) Hardship period. If the hardship criterion in subrule 98.25(2) is met, the child support recovery unit will grant the amended amount of withholding for a period of two years, subject to the provisions of subrule 98.25(6). However, if the obligor is receiving social security disability benefits, social security retirement benefits, or supplemental security income disability benefits, the obligor is deemed to continue to meet the hardship criterion for the duration of those benefits.

98.25(4) Denying requests. A hardship request may be denied if:

- a. The criterion in subrule 98.25(2) is not met.
- b. The obligor has been granted an amended amount of withholding based on this rule within the last two years and that hardship period will not expire in less than 30 days.
- c. The obligor's previous hardship period expired within the last six months and, within 30 days prior to the expiration date of the previous hardship period, the obligor did not submit the following to the child support recovery unit:

- (1) A written request for hardship; or
- (2) Verification of the obligor's income, and the child support recovery unit was not able to verify the obligor's income as described in paragraph 98.25(2) "a."

98.25(5) Notice requirements. The child support recovery unit will provide written notification to the obligor of the result of the hardship request.

a. When a hardship request is granted, the written notification will include the amended amount of withholding and the date the hardship period will expire.

b. When a hardship request is denied, the written notification will include the reason for denial.

98.25(6) Termination of hardship prior to expiration date. The hardship period will automatically end, regardless of expiration date, if any of the following occurs:

a. A current support obligation is added to the support order.

b. The current support obligation was previously suspended and is reinstated.

c. The delinquency has been paid in full.

d. The obligor was receiving social security disability benefits, social security retirement benefits, or supplemental security income disability benefits at the time the hardship request was granted, and the child support recovery unit has verified that the obligor is no longer receiving social security disability benefits, social security retirement benefits, or supplemental security income disability benefits.

ITEM 12. Adopt the following new rule 441—98.26(252D):

441—98.26(252D) Additional information about hardship. The child support recovery unit shall make reasonable efforts within 13 months after January 1, 2019, to identify and incrementally notify obligors who may be impacted by the changes to hardship procedures in rule 441—98.25(252D).

ITEM 13. Adopt the following new implementation sentence for **441—Chapter 98, Division II, Part A:**

These rules are intended to implement Iowa Code chapter 252D.

ITEM 14. Amend subrule 98.32(1) as follows:

98.32(1) Good cause exists. Good cause is found to exist by the court or the child support recovery unit. For purposes of this rule, "good cause" is defined as the posting of a secured bond by the obligor sufficient to pay all current and future child support obligations, including any ~~arrears~~ delinquency which may accrue.

ITEM 15. Rescind and reserve rule **441—98.35(252D)**.

ITEM 16. Amend rule 441—98.39(252D,252E) as follows:

441—98.39(252D,252E) Provisions for medical support. An income withholding order or notice of income withholding may also include provisions for enforcement of medical support when medical support is included in the support order. The income withholding order or notice of income withholding may require implementation of dependent ~~coverage under a health benefit plan~~ care coverage pursuant to Iowa Code chapter 252E or the withholding of a dollar amount for medical support. Amounts withheld for medical support shall be determined in the same manner as amounts withheld for child support.

ITEM 17. Amend subrule 98.40(2) as follows:

98.40(2) ~~Disposable income shall mean the nonexempt income of the obligor minus lawful deductions as prescribed by 42 U.S.C. Section 662(G).~~ means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

ITEM 18. Amend rule 441—98.41(252D) as follows:

441—98.41(252D) Multiple obligations. In the event that an obligor has more than one support obligation that is being enforced by the child support recovery unit, the unit may enter an income withholding order to enforce each obligation. The amount specified to be withheld on the ~~arrears~~ delinquency under the income withholding order or notice shall be determined in accordance with rule 441—98.24(252D).

ITEM 19. Amend subrule 98.42(1) as follows:

98.42(1) Notice to employer. The unit may send notice to the employer or other income provider by regular mail or by electronic means in accordance with Iowa Code chapter 252D. If the unit is sending notice by regular mail, it shall send Form 470-3272, ~~Order/Notice to Withhold Income for Child Support~~ Income Withholding for Support, or a notice in the standard format prescribed by 42 U.S.C. §666(b)(6)(A). If the unit is sending the notice by electronic means, it may include notice of more than one obligor's order and need only state once provisions which are applicable to all obligors, such as the information in paragraphs 98.42(1) "*d*," "*f*," "*g*," and "*i*," ~~of this subrule.~~ "*i*." The statement of provisions applicable to all obligors may be sent by regular mail or electronic means. The notice of income withholding shall contain information such as the following:

a. to j. No change.

ITEM 20. Amend subrule 98.42(2) as follows:

98.42(2) Notice to obligor. Form 470-2624, Initiation of Income ~~Withholding~~ Withholding/Medical Support Enforcement, shall be sent to the last-known address of the obligor by regular mail. The notice shall contain the following information:

a. to f. No change.

ITEM 21. Amend subrule 98.42(3) as follows:

98.42(3) Standard format. As provided in Iowa Code section 252D.17 ~~as amended by 1997 Iowa Acts, House File 612, section 61,~~ an order or notice of an order for income withholding shall be in a standard format prescribed by the child support recovery unit. Form 470-3272, ~~Order/Notice to Withhold Income for Child Support~~ Income Withholding for Support, is the standard format prescribed by the child support recovery unit, and the unit shall make a copy of the form available to the state court administrator and the Iowa state bar association.

ITEM 22. Amend subrule 98.43(2) as follows:

98.43(2) Informal conference.

a. No change.

b. Procedures for the informal conference are as follows:

(1) No change.

(2) The obligor may request an informal conference with the child support recovery unit if the obligor believes the withholding is in error ~~or meets the hardship criteria defined by subrule 98.24(1).~~

(3) The obligor shall request an informal conference in writing, ~~within 15 calendar days from the date of the notice of the right to an informal conference, or at any time, if a mistake of fact regarding the identity of the obligor or the amount of the delinquency is believed to have been made.~~

(4) to (7) No change.

(8) If the child support recovery unit has not complied with ~~subrule 98.24(1)~~ rule 441—98.24(252D), it shall then adjust the income withholding amount.

c. The issues to be reviewed at the conference shall be as follows:

(1) No change.

(2) For orders or notices resulting from the existence of a delinquency, whether:

1. No change.

~~2. The hardship criteria are met.~~

~~3. 2.~~ For income withholding orders or notices issued after November 1, 1990, whether the guidelines described at rule 441—98.24(252D) were followed.

(3) No change.

d. No change.

~~e.—Notwithstanding paragraph 98.43(2) “a” and subparagraph 98.43(2) “b”(3), an obligor who has been awarded social security disability benefits or supplemental security income disability benefits under the federal Social Security Act may request an informal conference in writing at any time.~~

ITEM 23. Amend subrule 98.43(3) as follows:

98.43(3) *Income withholding issued from another state.* The child support recovery unit shall follow procedures for a motion to quash or a request for hardship or conduct an informal conference based on an income withholding order or notice issued in another state only if the unit is providing services under 441—Chapter 95.

ITEM 24. Amend subrule 98.45(6) as follows:

98.45(6) ~~*Disability ends*~~ *Implementation or termination of amended amount of withholding due to hardship.* ~~The amount required to be withheld was based on the hardship criteria on or after September 1, 2006, and the child support recovery unit has verified that the obligor is no longer receiving social security disability benefits or supplemental security income disability benefits, unless the benefits have been changed to social security retirement benefits. The child support recovery unit has determined that the withholding order should be modified based upon the hardship provisions in rule 441—98.25(252D).~~

ITEM 25. Amend subrule 98.46(2) as follows:

98.46(2) *Satisfaction of amount to withhold.* No refund shall be made unless amounts have been collected which fully satisfy the amount specified in the ~~mandatory~~ income withholding order or notice for the withholding period during which income has been generated.

ITEM 26. Amend subrule 98.46(3) as follows:

98.46(3) *When issued.* Any amounts received in excess of the amounts specified in the order or notice to withhold shall be issued to the obligor within 30 days of discovery by the child support recovery unit, unless the obligor requests in writing that these amounts be credited toward the ~~arrearage~~ delinquency or future child support. If there is a dispute regarding whether there is an overpayment, the obligor may request an informal conference by following the procedures set out in subparagraphs 98.43(2) “a”(3) through (7). This procedure shall not preclude the obligor from utilizing other civil remedies.

ITEM 27. Rescind and reserve rule **441—98.47(252D)**.